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MONTANA LEGISLATIVE HISTORY

Chapter 60 19 95

Bill H _____ S 29 Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Jan 23	✓ C	Hearing Date(s)	Jan 09	✓ C
	Jan 31	✓ C			C
		C			C
		C			C
Date Out	Jan 31	✓ C		Jan 09	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

4/14 SIGNED BY GOVERNOR
CHAPTER NUMBER 442
EFFECTIVE DATE: 04/14/95—SECTIONS 7 & 8
EFFECTIVE DATE: 07/01/95—SECTIONS 1-6

SB 28 INTRODUCED BY AKLESTAD

REVISE COMPUTATION OF STATE LAND EQUALIZATION PAYMENT TO FULLY REIMBURSE COUNTIES FOR LOST TAXES BECAUSE OF STATE LANDS WITHIN COUNTIES

12/21 INTRODUCED
12/23 FISCAL NOTE REQUESTED
1/02 FIRST READING
1/02 REFERRED TO TAXATION
1/06 FISCAL NOTE RECEIVED
2/02 HEARING
2/08 TABLED IN COMMITTEE
3/29 MISSED TRANSMITTAL DEADLINE FOR 71ST DAY
DIED IN COMMITTEE

SB 29 INTRODUCED BY BARTLETT

GENERALLY REVISE LAWS RELATING TO CHILD SUPPORT ENFORCEMENT TO IMPROVE EFFICIENCY AND EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT SERVICES

BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

12/22	INTRODUCED		
1/02	FIRST READING		
1/02	REFERRED TO JUDICIARY		
1/09	HEARING		
1/09	COMMITTEE REPORT—BILL PASSED		
1/10	2ND READING PASSED	48	0
1/11	3RD READING PASSED	48	0
	TRANSMITTED TO HOUSE		
1/12	FIRST READING		
1/12	REFERRED TO JUDICIARY		
1/23	HEARING		
2/01	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
2/03	2ND READING CONCURRED	95	0
2/04	3RD READING CONCURRED	94	0
	RETURNED TO SENATE WITH AMENDMENTS		
2/07	2ND READING AMENDMENTS CONCURRED	48	0
2/08	3RD READING AMENDMENTS CONCURRED	49	0
2/09	SIGNED BY PRESIDENT		
2/10	SIGNED BY SPEAKER		
2/10	TRANSMITTED TO GOVERNOR		
2/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 60		
	EFFECTIVE DATE: 10/01/95		

SB 30 INTRODUCED BY GAGE

REMOVE REQUIREMENT THAT ELECTOR MAY CAST BALLOT FOR ONLY ONE POLITICAL PARTY IN PRIMARY ELECTION

12/22 INTRODUCED
1/02 FIRST READING
1/02 REFERRED TO STATE ADMINISTRATION
1/10 HEARING
2/18 TABLED IN COMMITTEE

SENATE BILL NO. 29

INTRODUCED BY BARTLETT

BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO CHILD SUPPORT ENFORCEMENT TO IMPROVE EFFICIENCY AND EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT SERVICES; CLARIFYING TIME LIMITS FOR LIENS, WRITS OF EXECUTION, AND COMMENCEMENT OF ACTIONS FOR CHILD SUPPORT COLLECTION; ALLOWING AN OBLIGEE TO RETAIN AMOUNTS WITHHELD FROM AN OBLIGOR'S INCOME WHEN THE AMOUNT WITHHELD IS A RESULT OF ANNUALIZED WITHHOLDING; EXPANDING THE DEFINITION OF "SUPPORT ORDER"; ALLOWING THE DEPARTMENT TO ENFORCE ORDERS FOR PERIODIC PAYMENTS FOR HEALTH OR MEDICAL NEEDS OR FOR ENROLLMENT IN A HEALTH BENEFIT OR MEDICAL INSURANCE PLAN; PROVIDING FOR AMOUNTS TO BE DEDUCTED FROM INCOME IF WITHHOLDING IS ANNUALIZED; CLARIFYING AN OBLIGOR'S RIGHT TO CONTEST MODIFICATION OF AN EXISTING INCOME WITHHOLDING ORDER; PROVIDING FOR CREDITING OF PAYMENTS PAID PURSUANT TO OTHER SUPPORT ORDERS; AND AMENDING SECTIONS 25-9-301, 25-9-302, 25-9-303, 25-13-101, 27-2-201, 27-2-211, 40-4-204, 40-5-201, 40-5-208, 40-5-255, 40-5-309, 40-5-414, 40-5-416, AND 53-2-613, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-9-301, MCA, is amended to read:

"**25-9-301. Docketing of judgment -- lien -- expiration.** (1) Immediately after the entry of the judgment in the judgment book, the clerk ~~must~~ shall make ~~the proper~~ entries of the judgment under appropriate heads in the docket kept by the clerk.

(2) From the time the judgment is docketed, it becomes a lien upon all real property of the judgment debtor that is not exempt from execution in the county~~,~~ and that is either owned by the judgment debtor at the time or ~~which~~ afterward acquired by the judgment debtor ~~may afterward acquire until~~ before the lien ceases. Except as provided in subsection (3), the lien continues for 6 years unless the judgment is previously satisfied.

(3) When the judgment is for the payment of child support, the lien continues for 10 years from

the termination of the support obligation or 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later, unless the judgment is previously satisfied."

Section 2. Section 25-9-302, MCA, is amended to read:

"**25-9-302. Filing of transcript of docket in another county -- lien -- expiration.** (1) A transcript of the original docket, certified by the clerk, may be filed with the district court clerk of any other county~~, and from~~. From the time of the filing, the judgment becomes a lien upon all real property of the judgment debtor, that is not exempt from execution, in that county, and that is either owned by the judgment debtor at the time or ~~which~~ afterward acquired by the judgment debtor ~~may afterward and~~ before the lien expires ~~acquire~~. Except as provided in subsection (2), the lien continues for 6 years unless the judgment is previously satisfied.

(2) When the judgment is for the payment of child support, the lien continues for 10 years from the termination of the support obligation or 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later, unless the judgment is previously satisfied."

Section 3. Section 25-9-303, MCA, is amended to read:

"**25-9-303. Filing of transcript of docket of federal court -- lien -- expiration.** (1) A transcript of the original docket of ~~any~~ a judgment that is rendered in the circuit or district court of the United States, ninth circuit, district of Montana, and that is certified by the clerk of court, may be filed with the district court clerk of any county~~; and from~~. From the time of the filing, the judgment becomes a lien upon all real property of the judgment debtor, that is not exempt from execution, in the county, and that is either owned by the judgment debtor at the time or ~~which~~ afterward acquired by the judgment debtor ~~may afterward and~~ before the lien expires ~~acquire~~. Except as provided in subsection (2), the lien continues for 6 years unless the judgment is previously satisfied.

(2) When the judgment is for the payment of child support, the lien continues for 10 years from the termination of the support obligation or 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later, unless the judgment is previously satisfied."

Section 4. Section 25-13-101, MCA, is amended to read:

"**25-13-101. Time limit for issuing execution.** (1) Except as provided in subsection (2), the party

in whose favor the judgment is given may, at any time within 6 years after the entry ~~thereof~~ of the judgment, have a writ of execution issued for its enforcement.

(2) When the judgment is for the payment of child support, the party in whose favor the judgment is given may, at any time within 10 years after the termination of the support obligation or within 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later, have a writ of execution issued for its enforcement."

Section 5. Section 27-2-201, MCA, is amended to read:

"**27-2-201. Actions upon judgments.** (1) Except as provided in subsection (3), the period prescribed for the commencement of an action upon a judgment or decree of any court of record of the United States or of any state within the United States is within 10 years.

(2) The period prescribed for the commencement of an action upon a judgment or decree rendered in a court not of record is within 5 years. The cause of action is considered, in that case, to have accrued when final judgment was rendered.

(3) The period prescribed for the commencement of an action to collect past-due child support that has accrued after October 1, 1993, under an order entered by a court of record or administrative authority is within 10 years of the termination of support obligation or within 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later."

Section 6. Section 27-2-211, MCA, is amended to read:

"**27-2-211. Actions to enforce penalty or forfeiture or other statutory liability.** (1) Within 2 years is the period prescribed for the commencement of an action upon:

(a) a statute for a penalty or forfeiture when the action is given to an individual or to an individual and the state, except when the statute imposing it prescribes a different limitation;

(b) a statute or an undertaking in a criminal action for a forfeiture or penalty to the state;

(c) a liability created by statute other than:

(i) a penalty or forfeiture; or

(ii) a statutory debt created by the payment of public assistance.

(2) The period prescribed for the commencement of an action by a municipal corporation for the violation of any city or town ordinance is within 1 year.

(3) Notwithstanding any other provision of this chapter, actions against directors or stockholders of a corporation to recover a penalty or forfeiture imposed or to enforce a liability created by law must be brought within 3 years after the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached or the liability was created.

(4) Unless fraud is involved or unless a support obligation has been entered, an action to enforce a statutory debt created by the payment of public assistance must be brought within 5 years from the date the debt arises. If fraud is involved, an action must be brought within 5 years of the discovery of the fraud. If a support obligation has been entered, an action must be brought within 10 years of the termination of the support obligation or within 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later."

Section 7. Section 40-4-204, MCA, is amended to read:

"**40-4-204. Child support -- orders to address health insurance -- withholding of child support.** (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct.

(2) The court shall consider all relevant factors, including:

(a) the financial resources of the child;

(b) the financial resources of the custodial parent;

(c) the standard of living that the child would have enjoyed had the marriage not been dissolved;

(d) the physical and emotional condition of the child and the child's educational and medical needs;

(e) the financial resources and needs of the noncustodial parent;

(f) the age of the child;

(g) the cost of day care for the child;

(h) any custody arrangement that is ordered or decided upon; and

(i) the needs of any person, other than the child, whom either parent is legally obligated to support.

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of

a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of the defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for that finding ~~that the application of the standards and guidelines is unjust to the child or a party or is inappropriate in that particular case~~. Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(4) Each district court judgment, decree, or order establishing a final child support obligation under this title and each modification of a final order for child support must include a provision addressing health insurance coverage in the following cases:

(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment, decree, or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a child support judgment, decree, or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party ~~must~~ shall, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) All temporary child support orders must contain a provision requiring the party who has health insurance in effect for the child or children of the parties to continue the insurance coverage pending final disposition of the case.

(d) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

(e) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.

(5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation under 40-4-208 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If an obligor is exempt from immediate income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

(c) After October 1, 1993, if a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period. When an order is annualized and withheld on a weekly or biweekly basis under this section, the support withheld from the obligor may be retained by the obligee when it exceeds the obligor's monthly support obligation if the excess support is a result of annualized withholding.

(6) For the purposes of income withholding under subsection (5), ~~every~~ each district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the parent obligated to pay support to inform the court and, if the department of social and rehabilitation services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following:

(a) the name and address of the parent's current employer;

(b) whether the parent has access to health insurance through an employer or other group; and

(c) if insurance coverage is available, the health insurance policy information.

(7) If the department of social and rehabilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification

of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.

(8) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of social and rehabilitation services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order.

(9) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support to be paid to:

(i) the legal custodian of the minor child;

(ii) (A) any other person, organization, or agency having legal physical custody of the minor child under a legal assignment of rights; or

(B) the court for the benefit of the minor child;

(iii) any other person or agency designated as caretaker of the minor child by agreement of the legal custodian; or

(iv) any assignee or other person, organization, or agency authorized to receive or collect child support.

(b) A judgment, decree, or order that omits the provision required by subsection (9)(a) is subject to the requirements of subsection (9)(a) without need for an amendment to the judgment, decree, or order or for any further action by the court."

Section 8. Section 40-5-201, MCA, is amended to read:

"**40-5-201. Definitions.** As used in this part, the following definitions apply:

(1) "Alleged father" means a man who is alleged to have engaged in sexual intercourse with a child's mother during a possible time of conception of the child or a man who is presumed to be a child's father under the provisions of 40-6-105.

(2) (a) "Child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States~~,~~; any person under 19 years

of age and still in high school,; or any person who is mentally or physically incapacitated if the incapacity began prior to the person's 18th birthday and for whom:

(i) support rights are assigned under 53-2-613;

(ii) a public assistance payment has been made;

(iii) the department is providing support enforcement services under 40-5-203; or

(iv) the department has received a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

(b) Child may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support to extend beyond the child's 18th birthday.

(3) "Department" means the department of social and rehabilitation services.

(4) "Director" means the director of the department of social and rehabilitation services or the director's authorized representative.

(5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

(6) "Hearing officer" or "hearing examiner" means the hearing officer appointed by the department for the purposes of this chapter.

(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a child or children.

(8) "Obligee" means:

(a) a person to whom a duty of support is owed and who is receiving support enforcement services under this part; or

(b) a public agency of this or another state having the right to receive current or accrued support payments.

(9) "Obligor" means a person, including an alleged father, who owes a duty of support.

(10) "Parent" means the natural or adoptive parent of a child.

(11) "Paternity blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. Paternity blood tests may include but are not limited to the human leukocyte antigen test and DNA probe technology.

(12) "Public assistance" means any type of monetary or other assistance for a child, including

medical and foster care benefits. The term includes payments to meet the needs of a relative with whom the child is living, if assistance has been furnished with respect to the child by a state or county agency of this state or any other state.

(13) "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide for the support ~~to~~ needs of a child under the laws of this or any other state or under a support order; or

(b) a support order for spousal maintenance if the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child of whom the person awarded maintenance is the custodial parent.

(14) "Support order" means an order, whether temporary or final, ~~providing a determinable amount for temporary or final periodic payment of funds for the support of a child,~~ that:

(a) provides for the payment of a specific amount of money, expressed in periodic increments or as a lump-sum amount, for the support of the child, including an amount expressed in dollars for medical and health needs, child care, education, recreation, clothing, transportation, and other related expenses and costs specific to the needs of the child; and

(b) is issued by:

~~(a)~~(i) a district court of this state;

~~(b)~~(ii) a court of appropriate jurisdiction of another state, Indian tribe, or foreign country;

~~(c)~~(iii) an administrative agency pursuant to proceedings under this part; or

~~(d)~~(iv) an administrative agency of another state, Indian tribe, or foreign country with a hearing function and process similar to those of the department under this part.

(15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated ~~thereunder~~ under the act."

Section 9. Section 40-5-208, MCA, is amended to read:

"**40-5-208. Medical support -- obligation enforcement -- sanctions.** (1) (a) In ~~any~~ a proceeding initiated pursuant to this part to establish a child support order, whether final or temporary, and in each modification of an existing order, the department shall require the obligor to obtain and maintain health insurance coverage for each child if health insurance coverage is available through the obligor's employment or other group health insurance plan. The order or modification of an order must include a statement that

the insurance must be obtained and maintained whenever the department is providing support enforcement services and that the failure to do so may result in the imposition of sanctions under this section.

(b) If the support order or modification of an order does not include a provision requiring the obligor to provide health insurance coverage for a child, upon notice to the obligor that the child is receiving support enforcement services under Title IV-D of the Social Security Act, the obligor shall obtain and maintain health insurance coverage as provided for in subsection (1)(a). This insurance is in addition to:

(i) an order requiring the obligee to maintain health insurance coverage;

(ii) an agreement that the obligee will maintain health insurance coverage; or

(iii) a failure or omission of the court order or modification of an order to require health insurance coverage.

(2) ~~(a) If~~ Whenever the department is providing ~~child support enforcement~~ IV-D services ~~and the obligor is required by an existing district court order or an administrative order under this section to provide health insurance coverage~~ for a child, the department shall also enforce ~~the health insurance obligation~~ any order issued by a court or administrative agency of competent jurisdiction that:

(a) requires the obligor to make periodic payments of an amount expressed in dollars for the health or medical needs of the child. The department shall apply the same enforcement remedies as are available for the enforcement of child support as if those remedies expressly applied to medical or health obligations.

(b) requires the obligor to enroll a child in a health benefit or medical insurance plan.

~~(b)~~(3) To ensure that health insurance coverage is available for the child, the obligor, upon written request by the department, shall provide the name of the insurance carrier, the policy identification name and number, the names of the persons covered, and any other pertinent information regarding coverage.

~~(3)~~(4) (a) The department may issue a notice commanding the obligor to appear at a hearing held by the department and show cause why a sum of not more than $100 per month per child should not be assessed for each month health insurance coverage is not secured or maintained if the department determines an obligor has failed to:

(i) obtain or maintain health insurance coverage as required under this section; or

(ii) provide information required under this section.

(b) If the department finds, after hearing or the obligor's failure to appear, that health insurance coverage has not been obtained or maintained or that the obligor has failed to provide the information required, the department may assess against the obligor not more than $100 per month per child for each

month health insurance coverage has not been obtained or maintained or for each month information has not been provided. The amounts may be enforced by any administrative remedy available to the department for the enforcement of child support obligations, including warrant for distraint provided for in 40-5-247 and income withholding provided for in Title 40, chapter 5, part 4.

~~(4)~~(5) The health insurance coverage must be provided under this section even though it may reduce the amount of the child support obligation or reduce the obligor's ability to pay child support as required.

~~(5)~~(6) Any amounts collected pursuant to this section must be returned to the general fund to help offset expenditures for medicaid."

Section 10. Section 40-5-255, MCA, is amended to read:

"40-5-255. Charging off child support debts as uncollectible. (1) Any support debt due the department from an obligor, which debt the department determines uncollectible, may be transferred from accounts receivable to a suspense account and cease to be accounted as an asset. If a warrant for distraint has been filed and the support debt has subsequently been charged off as uncollectible, the department shall issue a release of lien.

(2) At any time after 10 years from the date of termination of the support obligation or after 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later, the department may charge off as uncollectible any support debt upon which the department finds there is no available, practical, or lawful means by which the support debt may be collected. A proceeding or action under the provisions of this part may not be begun after expiration of the 10-year period to institute collection of a support debt. This part may not be construed to render invalid or nonactionable a warrant for distraint issued by the department prior to the expiration of the 10-year period or an assignment of earnings executed prior to the expiration of the 10-year period."

Section 11. Section 40-5-309, MCA, is amended to read:

"40-5-309. Amount to be deducted from income. (1) (a) The amount of money to be deducted each pay period from the obligor's income ~~shall be~~ is:

~~(a) (i)~~(i) (A) the amount of money necessary to pay current installments of child support as they become due and payable; plus

~~(ii)~~(B) the amount of money ~~which~~ that, when deducted in equal amounts each ~~payday~~ pay period, will pay off all outstanding child support payments delinquent within 2 years; or

~~(b)~~(ii) not less than 25% of the obligor's disposable earnings.

(b) If withholding is annualized, when deducted in equal amounts, the amount withheld each pay period must be sufficient to pay all installments due in a 12-month period under the order to withhold.

(2) The district court may allow a fee of not to exceed $5 per deduction, which the employer may deduct from the obligor's wages or salary for the expense of administering the deduction.

(3) The total amount to be deducted under subsections (1) and (2) may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. 1673(b), as amended.

(4) Except as provided in 40-5-315, the child support income deduction ~~shall~~ must cease when there is no past-due child support owing, unless the district court orders continued income deductions for payment of child support installments as they become due and payable."

Section 12. Section 40-5-414, MCA, is amended to read:

"**40-5-414. Hearing.** (1) To contest the withholding of income initiated under 40-5-412 because of a delinquency or the modification of an existing order to withhold, an obligor may within 10 days of being served with notice of intent to withhold income under 40-5-413 file with the department a written request for an administrative hearing to be held pursuant to the contested case provisions of Title 2, chapter 4, part 6.

(2) Venue for the administrative hearing may be in the county where the obligor resides if the obligor resides in this state, the county in which the payor or the payor's agent is located, or the county in which the department or any of its regional offices is located.

(3) The administrative hearing must be held by teleconferencing methods unless the obligor or the department expressly requests an in-person hearing before the ~~hearing~~ hearings examiner.

(4) If the obligor requests a hearing within the 10-day period:

(a) the initiation of delinquency income withholding by the department and the modification of an existing withholding order must be stayed until conclusion of the hearing or the date of the hearing if the obligor fails to appear at the scheduled hearing. ~~If~~ However, in a proceeding to initiate income withholding, if the obligor is only contesting an arrearage amount and is not contesting withholding for current support,

income withholding for current support is not stayed. In a proceeding to modify an existing order, income withholding under the existing order to withhold is not stayed.

(b) the department shall, within 45 days of the service of the notice of intent to withhold income, inform the obligor of the hearing results concerning whether income withholding will take place.

(5) The department shall issue an order to withhold income or a modified order to withhold in accordance with 40-5-415 if:

(a) the obligor fails to file a written request for hearing with the department within the specified 10-day period;

(b) the obligor fails to appear at a scheduled hearing;

(c) the ~~hearing officer~~ hearings examiner determines from the evidence that the obligor owes unpaid support equal to or in excess of 1 month's support obligation and the amount of arrearages owing is determined and adjudged to be a fixed and certain sum; ~~or~~

(d) there is an existing order to withhold and if the hearings examiner determines from the evidence that the obligor owes new or additional amounts in arrears; or

~~(d)~~(e) in cases in which income withholding is being initiated at the request of an obligee without regard to whether there is an arrearage, the ~~hearing~~ hearings examiner determines from the evidence that the obligor did not meet the terms of the alternative arrangement.

(6) For purposes of the hearing process, arrearages of support must be computed on the basis of the amount owed and unpaid on the date on which the obligor was served with the notice of intent to withhold income. When the department is enforcing a current support obligation, payment of the arrearage after service of the notice is not a basis for not initiating income withholding.

(7) In a case initiated because an arrearage has accrued or because additional income is being withheld to satisfy additional arrearages, the obligor, within 45 days of service of the notice of intent to withhold income, must be informed of the hearing decision on whether income withholding will take place.

(8) If the obligor fails to request a hearing within 10 days or fails to appear at a scheduled hearing or if the ~~hearing~~ hearings examiner determines that the obligor owes a combination of unpaid support equal to or in excess of 1 month's support obligation or determines that a modification of an existing order is proper, the department shall proceed with the intended action in accordance with 40-5-415."

Section 13. Section 40-5-416, MCA, is amended to read:

"**40-5-416. Determination of amount of income to be withheld.** (1) (a) Subject to the limitations provided in subsection (2), the amount of funds to be withheld each month from the obligor's income must be the amount of money necessary to pay current installments of support as they become due and payable.

(b) If income is being withheld to satisfy an arrearage, the amount of funds to be withheld must include the greater of:

(i) the amount of money that, when deducted in equal amounts each month, will pay all outstanding support arrearages and interest, if any, within 2 years; or

(ii) 25% of the obligor's income.

(c) If income is being withheld under this part, the department may allow a fee not to exceed $5 each month, which may be withheld by the payor as compensation for the administrative costs of each withholding.

(d) If a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period. If withholding is annualized, when deducted in equal amounts, the amount withheld each pay period must be sufficient to pay all installments due in a 12-month period under the order to withhold.

(2) The maximum amounts withheld from the obligor's wages or salaries, including fees, may not exceed the maximum amount permitted under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b), as amended.

(3) At any time, if the obligor can show that substantial hardship will result if the maximum permissible withholding is implemented or continued, the department for cause shown may in its discretion determine a lesser amount to be withheld each month in satisfaction of support arrearages."

Section 14. Section 53-2-613, MCA, is amended to read:

"**53-2-613. Application for assistance -- assignment of support rights.** (1) Applications for public assistance, including but not limited to aid to families with dependent children and medical assistance, must be made to the county department of public welfare in the county in which the person is residing. The application must be submitted, in the manner and form prescribed by the department of social and rehabilitation services, and must contain information required by the department of social and rehabilitation

services.

(2) A person by signing an application for public assistance assigns to the state, to the department of social and rehabilitation services, and to the county welfare department all rights that the applicant may have to support and medical payments from any other person in the applicant's own behalf or in behalf of any other family member for whom application is made.

(3) The assignment:

(a) is effective for both current and accrued support and medical obligations;

(b) takes effect upon a determination that the applicant is eligible for public assistance;

(c) remains in effect with respect to the amount of any unpaid support and medical obligation accrued under the assignment that was owed prior to the termination of public assistance to a recipient.

(4) Whenever a child support or spousal support obligation is assigned to the department of social and rehabilitation services pursuant to this section, the following provisions apply:

(a) If the support obligation is based upon a judgment or decree or an order of a court of competent jurisdiction, the department may retain assigned support amounts in an amount sufficient to reimburse public assistance money expended.

(b) A recipient or former recipient of public assistance may not commence or maintain an action to recover or enforce a delinquent support obligation ~~without notifying the department's child support enforcement division. The department may then release or relinquish its assigned interest or enter the proceeding. This subsection (4)(b) does not limit the right of any person to recover money not assigned.~~ or make any agreements with any other person or agency concerning the support obligation, except as provided in 40-5-202.

(c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay over or release for the benefit of any recipient or former recipient of public assistance any amounts received pursuant to a judgment or decree or an order of the court until the department's child support enforcement division has filed a written notice that:

(i) the assignment of current support amounts has been terminated; and

(ii) all assigned support delinquencies, if any, are satisfied or released.

(d) A recipient or former recipient of public assistance may not take action to modify or make any agreement to modify, settle, or release any past, present, or future support obligation unless the department's child support enforcement division is given written notice ~~and an opportunity to participate~~

under the provisions of 40-5-202. Any modifications or agreements entered into without the participation of the department are void with respect to the state, the department, and the county welfare department."

NEW SECTION. **Section 15. Credit for payments.** An amount collected and credited for a particular period pursuant to a support order issued by a tribunal of another state must be credited against the amount accruing or accrued for the same period under a support order issued by a tribunal of this state.

NEW SECTION. **Section 16. Codification instruction.** [Section 15] is intended to be codified as an integral part of Title 40, chapter 5, part 1, and the provisions of Title 40, chapter 5, part 1, apply to [section 15].

NEW SECTION. **Section 17. Coordination instruction.** If both [this act] and ____ Bill No. ____ [LC 365] are passed and approved and if ____ Bill No. ____ [LC 365] includes a section that amends 40-5-208, then [section 9 of this act], amending 40-5-208, is void.

NEW SECTION. **Section 18. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-END-

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on January 9, 1995, at 10:00 a.m.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 29
Executive Action: SB 1, SB 10, SB 29

HEARING ON SB 29

{Tape: 1; Side: A }

Opening Statement by Sponsor:

SENATOR SUE BARTLETT, Senate District No. 29, said SB 29 is a technical bill which addresses problem areas in our child support enforcement laws. Sections 1 through 6 and Section 10 all relate generally to the same topic and are simply changes in different

portions of the Code so that all portions relating to statutes of limitations will be the same. Sections 7, 11 and 13 all relate to withholding of income. Section 17 is a coordinating instruction. Section 9 covers a topic which is addressed much more extensively in another bill. If that bill passes, Section 9 of this bill will be void. If the other bill does not pass and this bill does pass, Section 9 of this bill will take effect. **SENATOR BARTLETT** asked **Mary Ann Wellbank, SRS Child Support Enforcement Division Administrator,** to give the committee a brief overview of child support and explain the problems this bill is trying to address.

Proponents' Testimony:

Mary Ann Wellbank, SRS Child Support Enforcement Division Administrator, presented her written testimony, **EXHIBIT 1. Ms. Wellbank** handed out a pamphlet entitled, "Department of Social and Rehabilitation Services Program Descriptions", **EXHIBIT 2.** The section dealing with child support enforcement was developed for legislators to give an overview of their program. The Division is authorized under Title IV-D of the Social Security Act. The CSED has the administrative authority, without going to court, to establish a new child support order. Their primary means of enforcing child support is through income withholding. They also distribute money if the obligor, person paying child support, has several different families. Their agency is also responsible for establishing the Montana Child Support Guidelines. The CSED has an administrative law judge who puts out orders every time they take an action. These orders are appealable to the district court and Supreme Court. Montana now has over $120 million in arrearages owed by obligors. **Ms. Wellbank** stated that Section 7 of SB 29 addresses the problem of a three pay period month, wherein the amount withheld exceeds the amount per month of the child support order. Currently, they must return the excess to the obligor which causes a disruption in regular child support to the obligee. Section 12 of SB 29 addresses an unintentional quirk in the law that stays their ability to collect current child support while a hearing on arrearages is pending. Section 15 addresses interstate cooperation in establishment of court orders. A provision was left out of the Uniform Interstate Family Support Act, adopted by the state in 1993. When there are court orders running simultaneously in two states, any money the obligor pays toward one order is credited for the same time period to the other order.

Kate Cholewa of the Montana Women's Lobby stated they are in support of the bill.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

SENATOR SHARON ESTRADA asked how many obligors who have fled the state are included in the $120 million of arrearages. There are approximately 42,000 individuals, of course, not all are delinquent. They will have a new computer program in operation in a couple of weeks and she would be able to give a number at that time. **SENATOR ESTRADA** further asked about the difficulty of collecting from obligors who now live in another state. **Ms. Wellbank** stated that each state has jurisdiction over the people in their state and many different rules apply making it difficult to collect past due amounts.

SENATOR LORENTS GROSFIELD asked for clarification between the terms "child care" and "child support". **Ms. Wellbank** stated different terms are use by different judges. The Division's authority allows them to collect for "child support". If an order is not worded correctly, they cannot collect the money. **Ms. Wellbank** stated that the obligor still owes for both child care and child support, however, their department cannot collect for child care.

SENATOR STEVE DOHERTY asked whether Montana is at the mercy of other states in order to get past due money. **Ms. Wellbank** stated there is a federal law entitled Federal Child Support Recovery Act where a U. S. attorney will prosecute the most egregious cases. **SENATOR DOHERTY** asked how often a mother owed less than $100,000 to $200,000 will get anything. **Ms. Wellbank** stated that would not happen very often. **SENATOR DOHERTY** further asked whether the Division has considered turning some of these bills over to bill collectors. **Ms. Wellbank** stated that within the coming biennium they would start turning over severely past due cases. They can only turn over AFDC arrearages. Non-AFDC arrearages are monies owed the obligee and the state has no interest in these funds.

SENATOR BRUCE CRIPPEN stated that he had received written testimony from **Peter S. Blouke, Director of SRS**, and it would be included with the minutes as **EXHIBIT 3**.

Closing by Sponsor:

SENATOR BARTLETT did not offer any more remarks in closing.

EXECUTIVE ACTION ON SB 1

Motion/Vote: **SENATOR MIKE HALLIGAN** moved **SB 1 DO PASS**. The motion **CARRIED UNANIMOUSLY** on oral vote.

EXECUTIVE ACTION ON 29

Motion/Vote: SENATOR GROSFIELD moved SB 29 DO PASS. The motion CARRIED UNANIMOUSLY on oral vote.

EXECUTIVE ACTION ON SB 10

Motion: SENATOR HALLIGAN moved that SB 10 DO PASS.

Discussion: SENATOR HALLIGAN stated that prior to 1991 the state had this authority. Valencia Lane stated that the state prepared a criminal procedure reorganization bill which had been worked on by county attorneys for up to four years before the bill was presented to the legislature. This bill completely reorganized criminal procedure statutes and in this package the law was changed. SB 10 would return this authority to the state the way it was before the reorganization bill.

SENATOR LARRY BAER stated he was not in favor of the state diluting the rights of a criminal defendant.

SENATOR REINY JABS questioned whether the defendant would lose any rights. SENATOR BAER stated that as it now stands, the defendant has a right to request a trial by judge. If this bill passes, the defendant will no longer have that discretionary power and be subject to a trial by jury if the prosecution so desires and thus the defendant would lose a discretionary right.

SENATOR GROSFIELD stated that in a case of perceived prejudice on behalf of the prosecution, the state would be able to appeal.

SENATOR AL BISHOP said this bill gets tough on crime by giving the state a better shot at going after a defendant.

SENATOR BARTLETT commented that prosecutors will not be asking for jury trials which are substantially more expensive than a trial by judge unless it is absolutely essential to their case.

SENATOR CRIPPEN stated he opposes the bill. The state's job is to show that the defendant has committed the crime. The state has to deal with the burden of proof. The defense does not have any burden of proof. SENATOR CRIPPEN feels the change in 1991 does not take any rights away from the prosecution.

Vote: The Do Pass motion for SB 10 CARRIED with SENATORS CRIPPEN, BAER, ESTRADA, GROSFIELD, and HOLDEN voting NO.

1

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL

DATE 1-9-95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

SEN:1995
wp.rollcall.man

SENATE STANDING COMMITTEE REPORT

January 9, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 29 (first reading copy -- white), respectfully report that SB 29 do pass.

Signed: _____
Senator Bruce Crippen, Chair

PV Amd. Coord.
SA Sec. of Senate

071118SC.SPV

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 1/9/95
BILL NO. SB 29

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

MARC RACICOT
GOVERNOR

PETER S. BLOUKE, PhD
DIRECTOR

STATE OF MONTANA

FAX # (406) 444-1370
(406) 444-4614

3075 N MONTANA, SUITE 112
PO BOX 202943
HELENA, MONTANA 59620-2943

Senate Bill 29
"Omnibus Bill"
Sponsored by Senator Sue Bartlett
Testimony of Mary Ann Wellbank
SRS Child Support Enforcement Division Administrator

The Child Support Enforcement Division of the Department of Social and Rehabilitation Services serves over 42,000 individuals. The division caseload is growing at a rate of 300 new cases per month. The CSED is responsible for performing variance federally mandated functions, all with the ultimate goal of collecting support for children. This starts with locating absent parents, establishing paternity in out-of-wedlock births, establishing support orders, enforcing and modifying support orders, and collecting and distributing monies among families in a timely manner. Each process I have just described is legally driven requiring very specific statutory authority for our actions. As the demand for services increases, we need to continue to find ways of operating the division more efficiently and ironing out existing problems to meet the needs of our constituents. That is why the SRS/CSED must constantly re-evaluate and develop legislation.

This particular bill was developed as a clean-up of existing statutes with the aim of improving the efficiency and effectiveness of the program. The provisions of the bill are as follows:

Sections **1 through 6 & 10** clarify changes made to various statutes of limitations and collection limitations on child support during the 1993 session. At that time these statutes were amended to read or to provide that liens and judgments for child support continue and may be collected for 10 years from the termination of the support obligation. These provisions have been clarified to provide that the collection period is 10 years from the termination of the support obligation "OR 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later." Example - a private attorney goes into court, reduces entire arrears to a judgment of $15,000, representing arrears owed for last nine years. That entire obligation may be collected for ten years from entry of that judgment, as the regular judgment statute of limitations has always provided. Without the change some attorneys have wondered whether their efforts to reduce the debt to judgment are worthless because due to the wording of the statute, they might only have 10 years from each monthly payment due, regardless of the entry of the lump-sum judgment. This was not the intention of the changes in 1993.

Section 7 would allow an obligee to retain amounts collected from the obligor through income withholding, which are in excess of the amount owed for that month, if the withholding is the result of a payor annualizing the withholding. The overwithheld amount would be applied to the obligor's child support obligation for the next month. Right now, we are required to return excess monies to the obligor which causes a disruption in regular child support to the obligee.

Section 8 clarifies that the definition of support order in MCA 40-5-201 includes money ordered for the payment of medical and health needs of a child, child care, transportation and other related expenses and costs specific to the needs of the child.

Section 9 expands the CSED's ability to enforce an order for medical and health needs of a child.

Sections 11 & 13 clarify that when withholding is annualized, the amount deducted each pay period must be sufficient to pay all installments within a twelve month period.

Section 12 clarifies the circumstances under which income withholding will be initiated or continued pending a hearing on an income withholding action.

Section 14 clarifies the responsibilities of the public assistance recipient in notifying the CSED of any action concerning the support obligation.

Section 15 adds a provision to the Uniform Interstate Family Support Act, adopted by this state in 1993. The provision was inadvertently left out of the proposal last session. The language clarifies, that, when an amount is collected and credited for a particular period pursuant to a support order issued by a tribunal of another state, it must be credited against the amount accruing or accrued for the same period under a support order that is issued by a tribunal of this state.

Thank you for your consideration of this legislation.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 1/9/95
SB NO. 29

Department of
Social and Rehabilitation Services

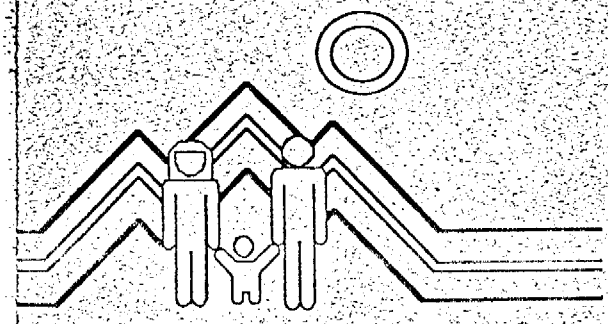
Program Descriptions

January 1995

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

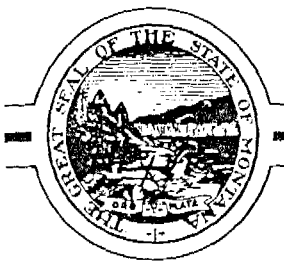
(brochure)

Peter S. Blouke, PhD
Director



DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES

[illegible] COMMITTEE
EXHIBIT NO. 3
DATE 1/9/95
BILL NO. 29



MARC RACICOT
GOVERNOR

PETER S. BLOUKE, PhD
DIRECTOR

STATE OF MONTANA

P.O. BOX 4210
HELENA, MONTANA 59604-4210
(406) 444-5622
FAX (406) 444-1970

Senate Bill 29
Sponsored by Senator Sue Bartlett
Written Testimony of Peter S. Blouke, PhD, Director
Department of Social and Rehabilitation Services

The Department of Social and Rehabilitation Services, Child Support Enforcement Division currently handles over 42,000 child support cases, with the caseload increasing at the rate of approximately 300 cases per month.

The SRS/CSED's primary mission is to ensure that children receive the monetary support that is rightfully and legally theirs by locating absent parents, establishing paternity in out-of-wedlock births, establishing, enforcing and modifying child support orders, and collecting and distributing child support monies to the families to which they belong. As the caseload and the public's need for SRS/CSED services continues to grow, the department is continually searching for methods of more efficient division operation while, at the same time, serving and satisfying the needs of its constituents.

With this goal in mind, the department has proposed SB29 to assist in enhancing the efficiency and effectiveness of the state Child Support Enforcement Program.

Thank you for your consideration of this legislation.

Submitted by: Peter S. Blouke
Peter S. Blouke, PhD, Director
Department of Social and
Rehabilitation Services

DATE 1-9-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 29

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Tracy Ann Wellbank	SRS - Child Support	SB29	✓	
Kate Cholewa	MT Womens Lobby	SB29	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Mr. Holzer said, "Not necessarily. In safety meetings those safety regulations and those standards will oftentimes be referenced and talked about."

REP. KOTTEL asked how long those safety meetings last.

Mr. Holzer said they could last anywhere from 15 minutes to 45 minutes depending upon the topic and the contractor.

Closing by Sponsor:

REP. FUCHS summarized what the bill does with the amendment. He felt the amendment **REP. MC CULLOCH** had proposed might enhance the bill. He rebutted the opponents' argument about productivity with the statement that most of the workers are on an hourly wage and there is no incentive for them to work faster to make more dollars.

{Tape: 1; Side: B; Approx. Counter: 23.7}

HEARING ON SB 29

Opening Statement by Sponsor:

SEN. SUE BARTLETT, SD 27, brought SB 29, a bill requested by the Department of Social and Rehabilitation Services (SRS) to the committee with the intent of clarifying laws having to do with child support collection.

Proponents' Testimony:

Mary Anne Wellbank, Administrator, SRS Child Support Enforcement Division, identified the purpose of the bill is to clean up problems which they have encountered in processing child support collection enforcement. She "walked" the committee through the various parts of the bill giving history and reasons for the provisions in SB 29. She distributed written testimony from the department's director, Peter Blouke. **EXHIBIT 4**

Belinda Hamilton, submitted written testimony and recommended amendments to SB 29 from the perspective of the rights and obligations of the payor. **EXHIBIT 5**

Arlette Randash, Eagle Forum, rose in favor of SB 29 and submitted written testimony. **EXHIBIT 6**

Laurie Koutnik, Christian Coalition of Montana, said that SB 29 is necessary legislation that not only calls for fiscal responsibility on the part of parents toward their children, but also alleviates some burdens and expenses that are currently covered by the state taxpayers. She felt it also allows those who are administering this program some latitude and sets in place some directives as to how to go about meeting the needs.

Kate Cholewa, Montana Women's Lobby, supports SB 29 and measures which improve child support collection efforts.

Opponents' Testimony:

None

CHAIRMAN CLARK relinquished the chair to **VICE CHAIR DIANA WYATT.**

Questions From Committee Members and Responses:

REP. DANIEL MC GEE asked if it is always the case that the obligor is a he and the obligee is a she.

Ms. Wellbank said that in about 5% of the cases the obligor is a she.

REP. MC GEE referred to page 9, lines 12 through 15 and asked **Ms. Wellbank** to go through that portion.

Ms. Wellbank said that Montana has child support guidelines which all courts and all administrative agencies must use to calculate the amount of support due. When that calculation is made, they look at the obligor's earning and the obligee's earning and look at extra ordinary medical expenses, child care and make the calculation and roll it all into one thing called child support. Once in a while a judge doesn't do that but orders an amount for child support plus an additional amount in medical expenses. Because the division only has the authority to collect child support orders, they cannot collect anything other than that definition. That section expands the definition to allow the division to collect any order for other types of expenses.

REP. MC GEE asked who this order is sent to.

Ms. Wellbank replied that when the order is issued, it is sent to the obligor and when it becomes a withholding order for an employer, the order is sent to the employer. It would direct the amount to be collected to be sent to the division.

REP. SMITH asked how the division arrived at ten years as an accrual period.

Ms. Wellbank explained how this portion of the bill simplifies the collection of judgments by clarifying what the past legislation did in extending the statute of limitations.

REP. SMITH proposed a case scenario where a parent of a child who turns 16 is no longer eligible for Medicaid and asked if this 10-year accrual period meant that the obligation stands until the child reaches age 26.

Ms. Wellbank said this was not so, that there are two ways people can apply for the services. One is, anyone whether they owe support or receive support and whether or not they are on AFDC, can request services and the division is obligated to provide them. The other way is if they are on welfare, they are automatically referred to the system for the collection of child support. If the child went off welfare and the custodial parent chose not to pursue enforcement and closed the case with the division, they would not pursue it but the statute of limitations would remain the same on that support order to 10 years beyond the age at which the support order terminates.

REP. MOLNAR recalled that **Ms. Wellbank** had said that $100 would be taken in lieu of an insurance policy in child support cases. He asked if that amount is deducted in the case of a child living with an obligee and who is covered by a policy.

{Tape: 2; Side: A}

Ms. Wellbank referred to page 10, section 9, number 4 as addressing this question and said it is in effect if the obligor fails to provide insurance.

REP. MOLNAR asked if the department buys insurance for the child when the $100 is collected.

Ms. Wellbank replied that they do not. She said a bill being introduced by **SEN. ECK** would address many of the insurance issues.

REP. MOLNAR wanted to know when SRS collects the money and the child is under the custody of the Department of Family Services (DFS) as a youth in need of supervision, if they give that money to DFS for this purpose.

Ms. Wellbank said that the $100 penalty in number 6 of section 9 goes to the general fund.

REP. MOLNAR stated that that is just a penalty and doesn't take care of the child.

Ms. Wellbank answered that he was correct.

REP. MOLNAR referred to page 6, lines 17 through 20, which states the excess amount of the obligation may be kept by the obligee and submitted a case history which applied to this situation. He could see what the department is trying to correct but that the language of the bill doesn't accomplish it.

Ms. Wellbank said there were several sections which tie this together and it is in fact only in situations where the support order is annualized that it has resulted in an under collection in some cases and over collection in others.

REP. MOLNAR asked if those sections speak to the fact that if this bill is passed, the obligee still must pay the under amount, but the obligor keeps the over amount.

Ms. Wellbank said the obligor should be paying the money to the division to ensure that the obligor gets proper credit and if there is an overpayment, the department is required to return that amount of overpayment.

REP. MOLNAR asked if there wasn't a simpler method which would eliminate the return payment process.

Ms. Wellbank said it was a difficult question. It is conceivable that someone could pay in advance, but if any arrears were owed, they would first need to pay for the arrearages. If an employer is withholding there are certain consumer credit act restrictions that limit them taking up to 50% of the obligor's earnings. She felt this system was simpler.

REP. MOLNAR talked about testimony which indicated a problem in the emphasis being on support collection without enforcement of visitation rights of the obligor. He asked if the department has attempted to correct some of these problems.

Ms. Wellbank philosophically agreed. The department has discussed it. It could be legislated that one responsibility of the department would be to enforce custody and visitation. It is not one of the functions of the department at this time to enforce visitation or custody and one problem is that the custodial parent does not allow the obligated parent to visit the child; meanwhile the department continues to enforce child support.

VICE CHAIR WYATT reminded the committee to keep their questions to the bill.

REP. SOFT referred to **Ms. Hamilton's** testimony about a person collecting child support from two states and asked what type of tracking mechanism the department has in place to intercept that type of activity.

Ms. Wellbank said this is a complicated question because the testimony dealt with an out-of-state person and Montana has no control over what happens out of state. In Montana and under all the federal statutes, AFDC is tied in with child support and any time an AFDC case is handled by the department, the obligor is notified to re-direct payment to the division and other states would do that as well. The obligor should not be making payment direct to the obligee. If it involves fraudulent collection, the obligee can be prosecuted for welfare fraud.

Closing by Sponsor:

SEN. BARTLETT added that sections 6, 11 and 13 deal with annualizing the child support being deducted in accordance with the dual period that a particular employer uses. This provision that deals with payments in excess of the monthly amount due is specific language that is required in order to make the annualizing work.

Motion: **REP. GRIMES MOVED TO ADJOURN.**

{Comments: This set of minutes is complete on two 60-minute tapes.}

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 1/23/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓ late		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey			✓
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓ late*		~~excused~~*
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea		✓	
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES

DATE 1/23/95
SB 29

MARC RACICOT
GOVERNOR

PETER S. BLOUKE, PhD
DIRECTOR

STATE OF MONTANA

P.O. BOX 4210
HELENA, MONTANA 59604-4210

Senate Bill 29
Sponsored by Senator Sue Bartlett
Written Testimony of Peter S. Blouke, PhD, Director
Department of Social and Rehabilitation Services

The Department of Social and Rehabilitation Services, Child Support Enforcement Division currently handles over 42,000 child support cases, with the caseload increasing at the rate of approximately 300 cases per month.

The SRS/CSED's primary mission is to ensure that children receive the monetary support that is rightfully and legally theirs by locating absent parents, establishing paternity in out-of-wedlock births, establishing, enforcing and modifying child support orders, and collecting and distributing child support monies to the families to which they belong. As the caseload and the public's need for SRS/CSED services continues to grow, the department is continually searching for methods of more efficient division operation while, at the same time, serving and satisfying the needs of its constituents.

With this goal in mind, the department has proposed SB29 to assist in enhancing the efficiency and effectiveness of the state Child Support Enforcement Program.

Thank you for your consideration of this legislation.

Submitted by: Peter S. Blouke

Peter S. Blouke, Ph.D., Director
Department of Social and
Rehabilitation Services

Belinda Hamilton
5601 Alabama Dr.
Helena, Mt. 59601

EXHIBIT D
DATE 1/23/95
SB 29

SB 29
Generally revising child support enforcement laws
Recommend:
Pass with amendments

Mr. Chairman, Ladies and Gentlemen of the Committee:

I am Belinda Hamilton and I am a provider and a recipient of child support payments.

I have some concerns with this Senate Bill concerning child support enforcement laws. Everything that I have read addresses the rights of the payee and how these rights will be enforced. However, there doesn't seem to be any one protecting the rights of the payor.

The law is very clear on the fact that if you don't make your monthly payments on schedule the government (child support enforcement) has the right to withhold these payments from your income. If you don't carry medical insurance on the dependent, child support enforcement has the legal right to attach the payors wages for an extra $100.00 per month to cover such costs.

No where (that I could find) is it written what the responsibilities of the payee are. How they must abide by the court order also. It should be very clear to this party what the punishment will be for not following the court order.

Some of the issues that I feel should be addressed are;

* Collecting A.F.D.C. while collecting child support directly from the payor.

Child support payments were sent directly to the payee, while she collected A.F.D.C. not only in one state but two states. The states tried to collect from the payor for this time period (he had receipts). This is how we know she collected in both states. When it was brought to the attention of child support enforcement we were told that the only punishment for this blatant fraud would be that if she reapplied for A.F.D.C. in this state they would withhold enough of her benefits to pay back what she had collected illegally.

* Visitation rights.

This is as much a part of the court order as the child support and insurance. Yet, no one is going to enforce this. In our case the mother has refused to let the father have any contact what so ever with the child. To pursue this would mean that we must hire 2 or 3 attorneys, because they were divorced in one city, the child resides in another state, and the father lives in another city. This is another expense to the father.

* Insurance.

The payor is required to keep medical insurance on the dependents. If he does not, his wages can be attached for $100.00 per month. However, if the payee does not give the information needed to the payor or his insurance company, she is still allowed to receive A.F.D.C..

* Withholdings shouldn't exceed a certain amount per child.

In one instance the court ordered support was $150.00, because he did not appear at a hearing they raised the support to $1000.00 per month. This leaves him $400.00 per month to live on. Which means that he cannot even afford housing. He filed a Modification request with the child support enforcement but was told they were back logged and didn't know when they would get to his case. The payor is allowed 10 days to respond to any withholding notices. They are required to respond in a timely manner and when they don't the payor suffers <u>again</u>

* All monthly statements concerning arrearage of support should match.

The total are different from the IRS to the child support enforcement in each state. The payor should be able to read these statements and know exactly what is in arrears.

I realize that, yes, there are some deadbeat fathers out there. There are also some that would like to spend time with their children or at least be allowed to talk to them. These are the fathers that pay the support, keep the insurance and still have no rights if the mother refuses (unless he can retain an attorney).

I am asking you to take time and review these concerns and try to come up with a bill that will be fair to both parties.

Thank you for your attention to this matter.

EXHIBIT 6
DATE 1/23/95
HB 29

January 23, 1995

House Judiciary
SB 29

For the record my name is Arlette Randash, representing Eagle Forum, a nationwide grassroots organization of women dedicated to strong families and sound government policy.

I rise in favor of SB 29 The breakdown of families has been particularly devastating to single parents rearing children. The U.S. Department of Commerce says "that for all children under 6 who live with only their mother, 66% live in poverty. One child out of every five in the nation lives in poverty and of all age groups children are the most likely to be poor." By 1991 12.9% of American children are dependent on AFDC and 2/3 of them will receive AFDC for eight years or more.

In 1960 less than 10% of children were being reared in single parent families. Today that figure has tripled, in 1991 28.6% of children were in single parent families. In fact 73% of children from single parent families will be in poverty at some point during their childhood while only 20 percent of children in two parent families will ever experience poverty. 22% of those children experiencing poverty will experience it for 7 years or more. William Galston in "A Progressive Family Policy for the 1990's" writes that "The economic consequences of a parent's absence are often accompanied by psychological consequences, which include higher than average levels of youth suicide, low intellectual and education performance, and higher than average rates of mental illness, violence and drug use."

Those facts are grim.....and they are well substantiated. Everyone of us has either been a single parent or have been friends or the employer of a struggling single parent. We have witnessed the strain as single parents struggle to meet the emotional needs of their children. This bill strengthens laws that will help the single parent receive the financial support necessary to make ends meet. Of coarse, not only will single parents be aided by the passage of this bill but those parents who are remarried.

Furthermore, when parents liable for support are held responsible, the taxpayers are spared from the onerous burden of meeting the needs of children insufficiently supported from delinquent parents. Moreover, the accountability in being called to responsibility will serve to chill irresponsible parenting.

Unfortunately, as an employer I hate to see one more responsibility placed on overburdened employers, however, they too benefit from employees, especially those who are single parents, who are less stressed in meeting their family responsibility, and from the savings to the taxpayers in general. But in truth the bill offers remuneration to offset the effort to deduct the child support and pay the district court.

I urge a "do pass" on SB 29.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE

BILL NO. SB29 SPONSOR(S) SEN. BARTLETT

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
M.A. Wellbank	SRS-CSED	✓	
Kate Cholewa	MT Nurses Lobby	✓	
Bernice Hamilton 5601 ALABAMA DR. HLNA	SELF	✓	
Arlette Randash	EAGLE Forum	✓	
Laurie Koutnik	CC of MT	✓	
Sue Barrett	S.D. 27	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
wp:vissbcom.man
CS-14

{Tape: 1; Side: A}

EXECUTIVE ACTION ON SB 29

Motion: **REP. LINDA MC CULLOCH MOVED SB 29 BE CONCURRED IN.**

Motion: **REP. MC CULLOCH MOVED TO AMEND PAGE 16, LINE 6 AFTER "ISSUED" INSERT "FOR THE SAME OBLIGATION."**

Discussion: **John MacMaster** explained the need for the amendment.

Vote: **The motion carried unanimously by voice vote, 19 - 0.**

Motion: **REP. MC CULLOCH MOVED SB 29 BE CONCURRED IN AS AMENDED.**

Discussion: **REP. SHIELL ANDERSON** had a question about which parent could claim the child as a dependent for income tax purposes.

REP. DEB KOTTEL said her understanding was that it is determined by the terms of the decree of dissolution.

REP. DANIEL MC GEE referred to page 8, line 24 under the definition of obligor, and questioned the phraseology, "alleged father."

REP. JOAN HURDLE thought it might mean that paternity had not been definitely established.

REP. KOTTEL asked, "Why not an alleged parent?" She said sometimes the obligor is a female and it is sexist to make the assumption that the obligor is a man.

REP. MC GEE suggested striking that phrase.

REP. HURDLE spoke in favor of leaving that phrase in since she did not think it was sexist since 95% of people who don't pay child support are fathers and if it is the mother, she is not the alleged mother, the only one who could be an alleged parent is the father.

REP. BRAD MOLNAR said they are currently conducting a vital statistics review in human services and an alleged father is somebody who has been adjudicated to be the father even though he might say that he is not.

Vote: **The motion carried 19-0 by voice vote.**

REP. DUANE GRIMES said he would carry SB 29.

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 1/31/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

HOUSE STANDING COMMITTEE REPORT

January 31, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 29** (third reading copy -- blue) **be concurred in as amended.**

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read: Carried by: Rep. Grimes

1. Page 16, line 6.
Following: "issued"
Insert: "for the same obligation"

-END-

Committee Vote:
Yes 19, No 0.

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